



**BEFORE THE CIVIL SERVICE MERIT BOARD FOR THE
CITY OF KNOXVILLE, TENNESSEE**

STEPHEN J. KING,	)	
	)	
Grievant,	)	
	)	WILLIAM W. PETTY
vs.	)	HEARING OFFICER
	)	
CITY OF KNOXVILLE,	)	
	)	
Respondent.	)	

DECISION

Comes, William W. Petty, Hearing Officer, in the above style matter and states as follows:

That this matter was heard on November 14, 2018.

That the Parties to this matter, the Grievant, Stephen J. King, and the Respondent, the City of Knoxville, have been and are represented by counsel who have done an outstanding job for their respective clients.

That the Hearing Officer received some One Hundred Seventy (170) pages of Motions, Answers and Responses, as well as Exhibits from the Parties Counsel. All of these and the well-argued positions by the respective Counsel heard on November 14, 2018, were considered in arriving at the Hearing Officer's Decision.

That the Grievant filed his action on the 28th day of August, 2018, while an employee of the City of Knoxville. It is the opinion of the Hearing Officer that the Grievant did in fact file his Petition timely and that the time he did it, he was an employee of the City of Knoxville. Clearly, the position which he occupied at the time his position was eliminated, was not covered by Civil Service Rules however, the Hearing Officer finds that the abolition of his position did, in fact, entitle him to retreat rights as the elimination of his position was

either a layoff and/or a reduction in force, more likely, a reduction in force and therefore the Civil Service Merit Board Rules do apply.

This Hearing Officer finds that the Grievant was, in fact, an employee of the City of Knoxville when he instituted his Grievance action. Further, pursuant to Article 28, it is the opinion of the Hearing Officer that the Hearing Officer has the authority to hear the issues in this matter and so finds.

With regard to Article 27, that has to do with Disciplinary Actions, it is the opinion of this Hearing Officer that this is not a Disciplinary Action.

This Hearing Officer finds that the City did, in fact, abolish the Grievant's position of Deputy Director of Engineering and therefore triggers the Grievant's retreat rights under Article 24 and Article 29.

The bottom line is that the Grievant was removed from his position as the result of the abolition of his former position. Whether we call it a layoff or reduction in force, it is the opinion of the Hearing Officer that the Deputy Director of Engineering was laid off and he therefore has retreat rights. Since the position was abolished, it is totally unforeseeable that he would be recalled to that position, ie, it was not a temporary layoff.

The fact that the City offered to the Grievant another position which he chose not to accept, in the opinion of the Hearing Officer, does not prohibit the Grievant from retreating to a previously held position.

It is the opinion of the Hearing Officer that the Grievant and the City were still negotiating until late August and therefore it is the opinion of this Hearing Officer that the Grievant timely filed his Action pursuant to the Civil Service Merit Board Rules.

If the Hearing Officer were to take the City's position reference Articles 27 and 28, then it is the Hearing Officer's opinion that the Grievant has no avenue for relief as the result of the abolishment of his former job title. This certainly cannot be, as to so find would say that the Grievant has no avenue for relief pursuant to these procedures. It is the opinion of the Hearing Officer that Article 27 deals with Disciplinary Actions and in this matter is certainly not a Disciplinary Action.

It should be further stated that this Hearing Officer also considered the fact that the Grievant was allowed to retreat in a prior action very similar to the facts in this case even though the City now wants to differentiate that for some reason. It is further the opinion of this Hearing Officer that this layoff was not temporary but was, in fact, permanent. It is also of significance to the Hearing Officer that the City had, in fact, made an offer to extend the Deputy Director of Engineering's position until January conditioned on the Grievant accepting other conditions. This further supports the Grievant not filing his Action until after August 21, 2018.

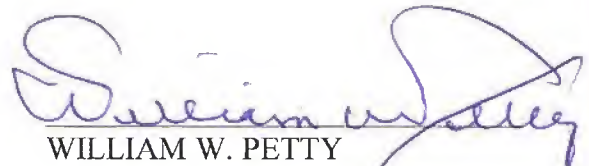
It is therefore the findings of the Hearing Officer that the City's Motion to Dismiss is denied and that a Summary Judgment is awarded to the Grievant, Stephen J. King, this Hearing Officer having found that the City certainly had the authority to abolish this position however, the Grievant certainly has, in the opinion of the Hearing Officer, the right to retreat.

That for this Hearing Officer to hold that this Dismissal was a temporary dismissal with the anticipation of a recall to a position that the City has abolished defies imagination and under no circumstances does this Hearing Officer believe that the possibilities of the Grievant being reemployed as Deputy Director of Engineering will ever occur. This Hearing Officer thinks that it is extremely relevant in this matter that Mr. King's position was

eliminated as to the question of whether his layoff was temporary or permanent. Had the position been retained and Mr. King laid off, it could be argued much more forcefully that he might be recalled but in the Hearing Officer's opinion of the abolishment of that position, the layoff was permanent.

It is therefore Ordered that the City's Motion for Summary Judgment is Denied and that the Grievant's Motion for Summary Judgment is Granted, and it is Ordered that the City shall award to Grievant, Retreatment rights and all other relief to which he is entitled.

This 27th day of November, 2018.


WILLIAM W. PETTY
HEARING OFFICER